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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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ARAQUE JR, GERARDO				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/796,706

Applicant(s)

FRAKI ET AL.

Examiner

Gerardo Araque Jr.

Art Unit

3689

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-42 and 44-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-42 and 44-62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-85/86)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on **6/3/2009** has been entered.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. **Claims 44 – 49 and 57 – 61** are rejected under 35 U.S.C. 101. Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to an examiner is that a § 101 process must (1) be tied to a particular machine or apparatus or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

To qualify as a § 101 statutory process, the claim should recite the particular machine or apparatus to which it is tied, for example by identifying the machine or apparatus that accomplishes the method steps, or positively reciting the subject matter

that is being transformed, for example by identifying the material that is being changed to a different state.

There are two corollaries to the machine-or-transformation test. First, a mere field-of-use limitation is generally insufficient to render an otherwise ineligible method claim patent-eligible. This means the machine or transformation must impose meaningful limits on the method claim's scope to pass the test. Second, insignificant extra-solution activity will not transform an unpatentable principle into a patentable process. This means reciting a specific machine or a particular transformation of a specific article in an insignificant step, such as data gathering or outputting, is not sufficient to pass the test.

Here, applicant's method steps fail the first prong of the new test because the claimed invention fails to set forth a particular machine that is specifically configured/programmed to carry out the claimed invention. Specifically, the Examiner asserts that the current claim language can be interpreted that the user, not the apparatus, is performing the claimed invention. Although, an apparatus is disclosed it is being interpreted that the device is nothing more than an insignificant extra solution activity since it is being understood that the user, through the use of the device, is performing many of the disclosed steps of the method.

Further, applicant's method steps fail the second prong of the test because there is no transformation of the data. It is asserted that the data has not been transformed into another state or into another object.

The applicant is reminded that:

"Purported transformation or manipulations simply of public or private legal obligations or relationships, business risks, or other such abstractions cannot meet the test because they are not physical objects or substances, and they are not representative of physical objects or substances.

(In re Bernard L. Bilski and Rand A. Warsaw Page 28)"

Moreover, the "transformation must be central to the purpose of the claimed process.

(In re Bernard L. Bilski and Rand A. Warsaw Page 28)"

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. **Claims 33 – 62** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Specifically, the applicant has claimed that the digital collectable card has "features specified according to characteristics of the apparatus." However, the Examiner asserts that the disclosure of the originally filed specification makes no mention that the features are according to "characteristics of the apparatus." The Examiner asserts that the features are no in accordance to the "characteristics of the apparatus", but that the features may relate to the digital collectable card.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. **Claims 33 – 42 and 50 – 56** are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over **Treyz (US Patent 6,587,835)** in view of **Filler et al. (WO 00/11827)**.

7. **Claims 33 – 42 and 50 – 56** are rejected under 35 U.S.C. 102(e) as being anticipated by **Treyz (US Patent 6,587,835)**.

8. In regards to **claims 35, 36, 40, and 55**, **Treyz** discloses an apparatus/cellular mobile communication phone comprising:

data (inherently included);

a memory configured to store data (**Figure 4 at least #74**);

a circuitry configured to instruct a display to display data and further configured to coordinate trading data (Fig. 4 #96, 104);

a detector configured to detect whether a different apparatus (cellular mobile communication phone) is available/capable for trading data (**Col. 45 Lines 21 - 30**); and

a short-range wireless communication transceiver configured to directly communicating with the different apparatus (cellular mobile communication phone) for trading data (**Fig. 4 # 94; see also Col. 13 Lines 16 – 37**);

wherein the detector is further arranged to detect the availability of a data **(inherently included in that a cellular phone is configured to be in communication with the nearest cellular phone tower and to also allow incoming calls).**

Regarding the limitation that the data is pertaining to a digital collectible card, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

9. In regards to **claim 33, 34, and 51**, **Treyz** discloses wherein the short-range wireless communication transceiver comprises a Bluetooth transceiver (**Col. 13 Lines 16 – 37**).

10. In regards to **claims 37 and 52**, **Treyz** discloses further comprising:

a cellular mobile communication network **(inherently includes see also at least Fig. 1); and**

a means for determining whether the (first) apparatus and the (second) different apparatus are in the same cell of the cellular mobile communication network **(see at least Col. Lines 21 – 30 wherein monitoring if a second phone is in the vicinity would require that the second phone is in the same cell).**

11. In regards to **claims 38 and 56**, **Treyz** discloses further arranged to transfer confirmation and registration messages to a server via a cellular mobile communication network (**Further, applicant should note that logging on to cellular mobile communication networks is similar to wire communication networks. Normally, the phone number, the phone's SIM's number on a GSM system, or both identifies the user of the cellular mobile phone. This would result in having information transmitted between the cellular phone and the cellular tower to determine whether the phone is in the correct network (i.e. Verizon or AT&T) and in the event that it is not a roaming signal would be displayed to the user.**).

12. In regards to **claim 39**, **Treyz** discloses further arranged to determine whether the different apparatus is in the vicinity of the apparatus (**Col. 45 Lines 21 – 30**).

13. In regards to **claim 41**, **Treyz** discloses wherein the detector is further arranged to determine whether another piece of data is available (**see at least Col. 10 Lines 9 – 42 wherein the cellular phone is configured to receive data from various locations and wherein it is also configured to search for other cellular towers when it has left the current cell**).

14. In regards to **claim 42**, **Treyz** discloses wherein the apparatus and the different apparatus are operable to exchange data (**see at least Col. 45 Lines 21 – 30 wherein monitoring would require data to be exchanged between the 2 mobile phones**).

15. In regards to **claims 50 and 62**, **Treyz** discloses a system for trading data comprising:

data (**inherently included**);

a remote server for storing data (Col. 2 Lines 15 – 27 wherein a server in communication with the handheld device is disclosed);

a first apparatus configured to store data, wherein the system is configured to detect the data and wherein the data is configured to be associated with a user of the first apparatus; (Fig. 2 # 12, Applicant should note that logging on to cellular mobile communication networks is similar to wire communication networks. Normally, the phone number, the phone's SIM's number on a GSM system, or both identifies the user of the cellular mobile phone. This would result in having information transmitted between the cellular phone and the cellular tower to determine whether the phone is in the correct network (i.e. Verizon or AT&T) and in the event that it is not a roaming signal would be displayed to the user);

a second apparatus having a second user, wherein the second apparatus is capable for associating the second user with the data, the second apparatus configured to determine if the first apparatus is in the vicinity of the second apparatus (Fig. 2 # 12, wherein multiple users can use the system, see also Col. 45 Lines 21 – 30 wherein a second user who would also be monitoring for a specific mobile phone would receive the first mobile phone's identification data. [See also provided example in citation]);

(Claim 62) a network entity arranged to associate data with the first mobile communication phone (first apparatus) (inherently included);

wherein the system is configured to detect whether the second apparatus (Claim 62 second mobile communication phone) is available for trading data, and wherein the

first and second apparatus (**Claim 62** first and second mobile communication phone) both comprise a short-range wireless communication transceiver configured to directly communicate between the first and second apparatus (**Claim 62** second mobile communication phone) for trading data, and wherein the first apparatus (**Claim 62** first mobile communication phone) is configured to detect whether the second apparatus mobile phone is available for trading the data (**Col. 13 Lines 16 – 37 wherein multiple users can use the system; Col. 45 Lines 21 – 30 wherein a second user who can also be monitoring for a specific mobile phone would receive the first mobile phone's identification data. [see also provided example in citation]]**); and

wherein the short-range wireless communication transceiver of the first apparatus (**Claim 62** first mobile communication phone) being arranged to detect a request for availability of data from the second apparatus (**Claim 62** second mobile communication phone) (**Col. 45 Lines 21 – 30 wherein a second user who can also be monitoring for a specific mobile phone would receive the first mobile phone's identification data. [See also provided example in citation]]**).

Regarding the limitation that the data is pertaining to a digital collectible card, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

16. In regards to **claim 53**, **Treyz** discloses further comprising:

a transceiver for cellular mobile wireless communication over a cellular mobile communication network (**Fig. 4 # 94**);

an input user interface to communicate to the cellular mobile communication network (**Fig. 4 #84, 90**);

an output user interface to display data (**Fig. 4 #82**);

a processor configured to transmit identity information over the cellular mobile communication network and a request to receive data (**Fig. 4 # 68, 96, 104**).

wherein the data is adapted to be associated with a user based on the identity information transmitted (**Further, applicant should note that logging on to cellular mobile communication networks is similar to wire communication networks. Normally, the phone number, the phone's SIM's number on a GSM system, or both identifies the user of the cellular mobile phone. This would result in having information transmitted between the cellular phone and the cellular tower to determine whether the phone is in the correct network (i.e. Verizon or AT&T) and in the event that it is not a roaming signal would be displayed to the user.**

17. In regards to **claim 54**, **Treyz** discloses wherein the user identity information includes a password (**Page 18 Lines 41 – 58**).

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. **Claims 33 – 42 and 50 – 56** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Treyz (US Patent 6,587,835)** in view of **Filler et al. (WO 00/11827)**.

20. In regards to **claims 35, 36, 40, and 55**, **Treyz** discloses a apparatus/cellular mobile communication phone comprising:

data associated with a user of the apparatus, the digital collectable card having features specified according to characteristics of the apparatus stored on a remote server (Col. 2 Lines 15 – 27 wherein a server in communication with the handheld device is disclosed and wherein one of ordinary skill in the art would have recognized that in order for the handheld device to be in communication with the server the handheld device must contain data associated with the user in order to provide the proper authorization for the handheld device to communicate and retrieve any pertinent information from the server);

a memory configured to store the specified features of the data (**Figure 4 at least #74**);

circuitry configured to instruct a display to display the selected features of the data and further configured to coordinate a trade of the data (**Fig. 4 #96, 104**);

a detector arranged to detect whether a different apparatus is available for trading data (**Col. 45 Lines 21 - 30**); and

a short-range wireless communication transceiver for directly communicate with the different apparatus for trading data (**Fig. 4 # 94; see also Col. 13 Lines 16 - 37**).

However, **Treyz** fails to explicitly disclose where the data being transferred is a digital collectible card.

Filler discloses a communication network where a user of a communication device is associated with a digital collectible card and is able to trade the digital tradable card with another user of a second communication device (**See at least Page 2 Lines 17 - 29, Page 27 - 18 Lines 13 - 2; Fig. 19**).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify **Treyz** to allow a user to trade digital collectible cards with other users, as taught by **Filler**, in order provide the ability to more easily trade and expand the number of users that are capable of trading digital cards.

21. In regards to **claim 33, 34, and 51, the combination of Treyz and Filler** discloses wherein the short-range wireless communication transceiver comprises a Bluetooth transceiver (**Treyz Col. 13 Lines 16 - 37**).

22. In regards to **claims 37 and 52, the combination of Treyz and Filler** discloses further comprising:

a cellular mobile communication network (**Treyz obviously included see also at least Fig. 1**); and

a means for determining whether the apparatus and the different apparatus are in the same cell of the cellular mobile communication network (**Treyz see at least Col. Lines 21 – 30 wherein monitoring if a second phone is in the vicinity would require that the second phone is in the same cell**).

23. In regards to **claims 38 and 56, the combination of Treyz and Filler** discloses further arranged to transfer confirmation and registration messages to a server via a cellular mobile communication network (**Filler Figure 3; Applicant should note that logging on to cellular mobile communication networks is similar to wire communication networks. Normally, the phone number, the phone's SIM's number on a GSM system, or both identifies the user of the cellular mobile phone. This would result in having information transmitted between the cellular phone and the cellular tower to determine whether the phone is in the correct network (i.e. Verizon or AT&T) and in the event that it is not a roaming signal would be displayed to the user.**).

24. In regards to **claim 39, the combination of Treyz and Filler** discloses further arranged to determine whether the different apparatus is in the vicinity of the apparatus (**Treyz Col. 45 Lines 21 – 30**).

25. In regards to **claim 41, the combination of Treyz and Filler** discloses further arranged to determine whether another piece of data (digital collectible card) is available (**Filler Pages 27 – 28 Lines 13 – 2**).

26. In regards to **claim 42, the combination of Treyz and Filler** discloses wherein the apparatus and the different apparatus are operable to exchange messages (**Treyz**

see at least Col. 45 Lines 21 – 30 wherein monitoring would require data to be exchanged between the 2 mobile phones; Filler Figure 19 #1060, 1070, 1080; Moreover, the Examiner also asserts that the concept of text messaging/instant messaging is an old and well known function of cell phones [for more information see supplied references “Keeping in touch It’s not enough to have instant messaging on your phone PCs these days. Get ready for instant messages on your cell phone. AT&T Wireless offers it, and Sprint PCS will soon.”)].

27. In regards to claims 50 and 62, Treyz discloses a system for trading data comprising:

a remote server for specifying features of the data according to characteristics of a first apparatus stored on the remote server (Col. 2 Lines 15 – 27 wherein a server in communication with the handheld device is disclosed and wherein one of ordinary skill in the art would have recognized that in order for the handheld device to be in communication with the server the handheld device must contain data associated with the user in order to provide the proper authorization for the handheld device to communicate and retrieve and pertinent information from the server);

the first apparatus configured to store the specified features of the data, wherein the system is configured to detect the data, and wherein the data is configured to be associated with a user of the first apparatus (Fig. 2 # 12, Applicant should note that logging on to cellular mobile communication networks is similar to wire communication networks. Normally, the phone number, the phone's SIM's

number on a GSM system, or both identifies the user of the cellular mobile phone. This would result in having information transmitted between the cellular phone and the cellular tower to determine whether the phone is in the correct network (i.e. Verizon or AT&T) and in the event that it is not a roaming signal would be displayed to the user);

a second apparatus having a second user, the second apparatus being capable of associating the second user with the data, the second apparatus configured to determine if the first apparatus is in the vicinity of the second apparatus (Fig. 2 # 12, wherein multiple users can use the system, see also Col. 45 Lines 21 – 30 wherein a second user who would also be monitoring for a specific mobile phone would receive the first mobile phone's identification data. [See also provided example in citation]);

(Claim 62) a network entity arranged to associate data with the first mobile communication phone **(obviously included);**

wherein the system is configured to detect whether the second apparatus **(Claim 62 second mobile communication phone)** is available for trading data, and wherein the first and second apparatus **(Claim 62 first and second mobile communication phone)** both comprise a short-range wireless communication transceiver configured to directly communicate between the first and second apparatus **(Claim 62 second mobile communication phone)** for trading data, and wherein the first apparatus **(Claim 62 first mobile communication phone)** is configured to detect whether the second apparatus mobile phone is available for trading the data **(Col. 13 Lines 16 – 37 wherein multiple**

users can use the system; Col. 45 Lines 21 – 30 wherein a second user who can also be monitoring for a specific mobile phone would receive the first mobile phone's identification data. [see also provided example in citation]]; and

wherein the short-range wireless communication transceiver of the first apparatus (**Claim 62** first mobile communication phone) being arranged to detect a request for availability of data from the second apparatus (**Claim 62** second mobile communication phone) (**Col. 45 Lines 21 – 30 wherein a second user who can also be monitoring for a specific mobile phone would receive the first mobile phone's identification data. [See also provided example in citation]]**).

However, **Treyz** fails to explicitly disclose where the data being transferred is a digital collectible card.

Filler discloses a communication network where a user of a communication device is associated with a digital collectible card and is able to trade the digital tradable card with another user of a second communication device (**See at least Page 2 Lines 17 – 29, Page 27 – 18 Lines 13 – 2; Fig. 19**).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify **Treyz** to allow a user to trade digital collectible cards with other users, as taught by **Filler**, in order provide the ability to more easily trade and expand the number of users that are capable of trading digital cards.

28. In regards to **claim 53, the combination of Treyz and Filler** discloses further comprising:

a transceiver for cellular mobile wireless communication over a cellular mobile communication network (**Fig. 4 # 94**);

an input user interface to communicate to the cellular mobile communication network (**Fig. 4 #84, 90**);

an output user interface to display data (digital collectible card) (**Fig. 4 #82**);

a processor configured to transmit identity information over the cellular mobile communication network and a request to receive data (digital collectible card) (**Fig. 4 # 68, 96, 104**).

wherein the data is adapted to be associated with a user based on the identity information transmitted (**Further, applicant should note that logging on to cellular mobile communication networks is similar to wire communication networks. Normally, the phone number, the phone's SIM's number on a GSM system, or both identifies the user of the cellular mobile phone. This would result in having information transmitted between the cellular phone and the cellular tower to determine whether the phone is in the correct network (i.e. Verizon or AT&T) and in the event that it is not a roaming signal would be displayed to the user.**

29. In regards to **claim 54**, the combination of **Treyz** and **Filler** discloses wherein the user identity information includes a password (**Treyz Page 18 Lines 41 – 58; Filler Page 15 Lines 31 – 33**).

30. **Claims 44 – 49, 57 – 58, and 59 – 61** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Filler et al. (WO 00/11827)** in view of **Yu et al. (US Patent 6,684,087)** and in further view of **Treyz (US Patent 6,587,835)**.

31. In regards to **claims 44, 45, 46, 47, 57, 59, and 61**, Filler discloses a method comprising:

specifying features of data according to characteristics of a first apparatus stored on the remote server (see at least Page 8 Lines 18 – 31 wherein a server in communication with the user is disclosed and wherein one of ordinary skill in the art would have recognized that in order for the user, with the use of a device (computer), to be in communication with the server the user would have data associated with the user in order to provide the proper authorization for the user to communicate and retrieve any pertinent information from the server);

storing data at the first apparatus (first mobile phone) (inherently included in mobile phones);

associating the digital collectible card data file with the first apparatus (first mobile phone) is performed at a network entity (Page 2 Lines 17 – 29);

detecting whether a second apparatus is available for trading a digital collectible card, including detecting the availability of a particular digital card (Page 27 – 28 Lines 13 – 2 wherein agreeing to terms of the trade and swapping cards would require the system to determine if the second device is available a digital collectible card and the act of swapping would only occur if a particular card has been detected.

This would further result in detecting whether the second device has a digital collectible card trading capability because if it doesn't then the swap would not occur.); and

Filler is discussed above, but fails to disclose:

the communication network to be a cellular mobile communication network and the computer is to be a cellular mobile phone;

communicating within an operational range of short-range wireless communication to trade the digital collectable card directly between the first apparatus and the second apparatus for trading the particular digital collectable card; and

exchanging a short-range wireless communication between the first and second mobile phones

Yu discloses a computer being a mobile cellular phone to enter a cellular mobile communication network and use the Internet to download digital collectible trading cards as an alternative to trading data over wired connections. Further still, it is asserted that a cell phone is a short-range wireless communication device in that they can only function if it is within the range of a cellular phone tower (**see provided Google Definition of "Cell"**). Moreover, the concept of exchanging communication between the first and second mobile phone, whether through text or voice, is a feature that is already included in mobile phones since those are the primary functions of the device.

Therefore, as taught by **Yu**, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a cellular mobile phone in a cellular mobile communication network to enter the Internet, as an alternative to wired

communication, and download digital collectible trading cards. Further, applicant should note that logging on to cellular mobile communication networks is similar to wire communication networks. Normally, the phone number, the phone's SIM's number on a GSM system, or both identifies the user of the cellular mobile phone.

However, **the combination of Filler and Yu**, as modified above, fails explicitly disclose:

detecting whether a first apparatus (first mobile phone) is in the vicinity of a second apparatus (second mobile phone); and

detecting whether the first apparatus (first mobile phone) is in the vicinity of the second apparatus (second mobile phone) comprises determining whether the second apparatus (second mobile phone) are in the same cell of a cellular mobile communication network is old and well known.

Treyz teaches determining the vicinity of a second user based on location information of an apparatus of a user and of an apparatus of a second user to find the proximity of the second user with respect to the user (**Col. 45 Lines 21 – 30**). Further still, detecting whether the first apparatus (first mobile phone) is in the vicinity of the second apparatus (second mobile phone) comprises determining whether the second apparatus (second mobile phone) are in the same cell of a cellular mobile communication network is old and well known (**see provided Newton Telecom Dictionary definition for Cell and CMTS**).

Therefore, as taught by **Treyz**, it would have been obvious to one having ordinary skill in the art at the time of the invention was made to determine the vicinity of

a second user based on the location information of the apparatus of the user and of the apparatus e of the second user to find the proximity of the second user with respect to the user.

32. In regards to **claims 48 and 60**, **Filler** discloses further comprising a means for transferring confirmation and registration messages to a server administering the digital collectable card via a mobile communications network (**Figure 3**).

33. In regard to **claim 49**, **Filler** discloses wherein the first and second mobile terminals are operable to exchange messages proposing a meeting to trade the digital collectable card (**Figure 19 #1060, 1070, 1080**; **Moreover, the Examiner also asserts that the concept of text messaging/instant messaging is an old and well known function of cell phones [for more information see supplied references “Keeping in touch It’s not enough to have instant messaging on your phone PCs these days. Get ready for instant messages on your cell phone. AT&T Wireless offers it, and Sprint PCS will soon.”]**).

34. In regards to **claim 58**, **the combination of Filler, Yu, and Treyz** discloses further arranged to transfer confirmation and registration messages to a server via a cellular mobile communication network (**Filler Figure 3**; **Applicant should note that logging on to cellular mobile communication networks is similar to wire communication networks. Normally, the phone number, the phone's SIM's number on a GSM system, or both identifies the user of the cellular mobile phone. This would result in having information transmitted between the cellular phone and the cellular tower to determine whether the phone is in the correct network**

(i.e. Verizon or AT&T) and in the event that it is not a roaming signal would be displayed to the user.)

Response to Arguments

35. Applicant's arguments with respect to **claims 33 – 42 and 44 – 62** have been considered but are moot in view of the new ground(s) of rejection.

Specifically, the applicant's arguments are directed towards newly introduced limitations not previously presented or discussed.

36. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the first apparatus configured to store the specified elected features of the first digital collectable card) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

37. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerardo Araque Jr. whose telephone number is (571)272-3747. The examiner can normally be reached on Monday - Friday 8:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on (571) 272-6805. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

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/G. A./
Examiner, Art Unit 3689
6/29/09

/Tan Dean D. Nguyen/
Primary Examiner, Art Unit 3689
7/1/09